

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

SHANE BAKER,

Plaintiff,

vs.

**Case No.: 2:13-cv-0034
JUDGE SMITH
Magistrate Judge King**

JOEL E. KAYE, M.D., et al.,

Defendants.

ORDER

On July 23, 2013, the United States Magistrate Judge issued a *Report and Recommendation* recommending that Defendants' Motion to Dismiss be **GRANTED IN PART AND DENIED IN PART**. Specifically, the Magistrate Judge recommended that the Plaintiff's claims against Defendants Joel E. Kaye, M.D., Charles H. Muncrief, D.O., and S. Douglas Haas, M.D., be dismissed without prejudice of insufficiency of process, that all claims against Defendants Mary Lawrence and Mary Roush be dismissed with prejudice for failure to state a claim upon which relief can be granted, and that Plaintiff's state law claims against all Defendants for violation of O.A.C. § 5120:1-8-19, O.A.C. § 5120:1-8-09, and O.R.C. § 5120.01 be dismissed with prejudice for failure to state a claim upon which relief can be granted. It is further recommended that Defendants' Motion to Dismiss is denied as to Plaintiff's federal claims under 42 U.S.C. § 1983 and state law claims of medical negligence against Defendants John Gardner and Dr. Andrew Eddy. (*See Report and Recommendation*, Doc.17). The parties were advised of their right to object to the *Report and Recommendation*. This matter is now

before the Court on Plaintiff Shane Baker's Objections to the *Report and Recommendation*. (See Doc. 18). The Court will consider the matter *de novo*. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

The objections present the same issues presented to and considered by the Magistrate Judge in the *Report and Recommendation*. Plaintiff objects to the Magistrate Judge's recommendation to dismiss his 42 U.S.C. § 1983 claims against Defendants Mary Roush and Mary Lawrence. Plaintiff argues that he "adequately alleged that he had an obvious need for care and that the Defendants were aware of the need but did nothing to provide or attempt to get the Plaintiff care." (Pl.'s Objections at 2). However, as the Magistrate Judge thoroughly discussed in the *Report and Recommendation*, such "[c]onclusory allegations that defendants violated plaintiff's Eighth Amendment rights and were "aware" that plaintiff needed additional treatment . . . are simply insufficient to state an Eighth Amendment deliberate indifference claim." (*Report and Recommendation* at 7). For the reasons stated in the *Report and Recommendation*, this Court finds that Plaintiff's objections are without merit.

The *Report and Recommendation*, Document 17, is **ADOPTED** and **AFFIRMED**. Plaintiff's claims against Defendants Joel E. Kaye, M.D., Charles H. Muncrief, D.O., and S. Douglas Haas, M.D., are hereby dismissed without prejudice of insufficiency of process. All of Plaintiff's claims against Defendants Mary Lawrence and Mary Roush are hereby dismissed with prejudice for failure to state a claim upon which relief can be granted. Plaintiff's state law claims against all Defendants for violation of O.A.C. § 5120:1-8-19, O.A.C. § 5120:1-8-09, and O.R.C. § 5120.01 are hereby dismissed with prejudice for failure to state a claim upon which relief can be granted. Finally, Defendants' Motion to Dismiss is denied as to Plaintiff's federal

claims under 42 U.S.C. § 1983 and state law claims of medical negligence against Defendants John Gardner and Dr. Andrew Eddy.

The Clerk shall remove Documents 14, 17 and 18 from the Court's pending motions list.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT